

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	MM DOCKET NO. 97-128
)	
MARTIN W. HOFFMAN,)	
Trustee-in-Bankruptcy for Astroline)	File No. BRCT-881201LG
Communications Company Limited)	
Partnership)	
)	
For Renewal of License of)	
Station WHCT-TV, Hartford, Connecticut)	
)	
SHURBERG BROADCASTING OF HARTFORD)	File No. BPCT-831202KF
)	
For Construction Permit for a New)	
Television Station to Operate on)	
Channel 18, Hartford, Connecticut)	
)	
TO: The Honorable John M. Frysiak		
Administrative Law Judge		

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JUL 30 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**MOTION FOR LEAVE TO SUBMIT REPLY**

1. Shurberg Broadcasting of Hartford ("SBH") hereby requests leave to submit a reply to the Joint Opposition submitted herein by Mr. Hoffman, Mr. Ramirez and Two If By Sea Broadcasting Corporation ("TIBS") (collectively, the "Opposers"). The following brief reply is warranted in view of the unfortunately misguided arguments presented by the Opposers, and in the interest of avoiding unnecessary delay in the progress of this case.

2. The Opposers argue that SBH's motion is "late-filed". That is not the case. There is no time limit for the filing of motions for leave to seek admissions. To be sure, the time for seeking admissions as a matter of right, without the need for any motion, has passed.^{1/} But that time passed long before discovery even began herein. SBH's most

^{1/} The Opposers seem to oppose all of SBH's discovery, which included requests for documents and simple interrogatories along with the requests for admissions. But SBH is aware of no time limitation at all on interrogatories or document requests in this proceeding, and any objection which the Opposers may be thought to raise in that regard must be rejected.

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recent discovery requests were filed with almost a month left *before* the close of discovery. They cannot be said to be "late" in any meaningful sense, especially so in view of the fact that, as the Presiding Judge is aware, until approximately June 30 the parties herein were making serious attempts to settle the case.^{2/}

3. Oddly, the Opposers claim surprise that anyone could possibly be interested in whether Astroline Communications Company Limited Partnership ("Astroline") ever alerted the Commission to a substantial change in its partnership agreement. Bear in mind here that a central issue in this case is whether Astroline lied to the Commission about Astroline's partnership structure and the extent to which that structure was or was not consistent with the Commission's minority ownership policies. The most basic, threshold evidence on that issue thus consists of the materials and statements which Astroline itself in fact submitted to the Commission.

4. Documents which have been produced thus far demonstrate the following. Astroline did file a copy of its original partnership agreement (effective May 29, 1984) with the Commission. In mid-1985, Astroline added several new partners, duly notifying the Commission of most of those changes. At this point, Astroline's partners were apparently defining each partner's "ownership" interest (including his/her share of profits, losses and the like) by reference to the partner's share of capital contributions to the partnership.

5. By a substantial amendment of its partnership agreement (effective December 31, 1985, but committed to writing only in March, 1986) Astroline changed that

^{2/} When those efforts appeared to be futile (as SBH so advised the Court on June 30), SBH promptly renewed its discovery efforts, conducting additional document review (of six boxloads of materials) in Boston, and then further review of the eight or so boxloads of materials previously culled by SBH from some 30 boxloads made available in response to earlier document requests.

mechanism. By the terms of that amended partnership agreement, Mr. Ramirez -- who was originally said to have owned a 21% share of Astroline's equity entitling him to 21% of the partnership's profits and losses -- found his share of the partnership's profits and losses reduced drastically to approximately 0.75%, and his right to distribution upon sale of the partnership's assets was similarly dramatically restricted. Coincident with the December 31, 1995 change in the Astroline partnership agreement, Mr. Ramirez began to report to the Internal Revenue Service that his ownership in the partnership had dropped from 21% to approximately 0.75%. In other words, the December 31, 1985 amended partnership agreement plainly marked a turning point in Astroline's history.

6. An obvious question of direct relevance to the issues in this proceeding is whether (and if so, how and when) Astroline notified the Commission of this important change in its structure. SBH would have thought that the Opposers (at least one of whom -- Mr. Hoffman -- has the burden of establishing that Astroline *did* act properly) would have focused on that question early on, and would have promptly identified any and all documents establishing that Astroline properly advised the Commission of the change in its partnership agreement. It is therefore shocking that the Opposers feign surprise at SBH's interest in this particular question. ^{3/}

7. As far as the Opposers' claim of undue burden is concerned, the fact is that the tens of thousands of pages of materials which SBH has already sifted through have been available to all of the Opposers for far longer than they have been available to SBH. Indeed, SBH obtained those documents from Mr. Hoffman and former agents of Astroline, and those

^{3/} For its part, SBH undertook precisely such a search, and has come up empty-handed. SBH suspects that this is because Astroline did not in fact ever notify the Commission of that fundamental change in its partnership agreement.

documents were made available to SBH only *after* they had been made available to TIBS and/or Mr. Ramirez. Since the question which SBH has raised is fundamental to this proceeding, and since all of the Opposers had access to the same universe of documents as SBH (for longer than SBH had such access), the Opposers' claim of burden can and should be ignored.

8. SBH's request is a narrowly tailored effort to sharpen the evidence, prior to the hearing, on a point of particular importance to the issues to be tried. That is one of the goals of the discovery process. SBH's request is a simple one: if any of the parties possesses, or knows of, any document(s) reflecting that Astroline submitted the December 31, 1985 amended partnership agreement to the Commission or notified the Commission of the terms of that agreement, then such party can and should provide the document(s) or (if the party does not possess a copy) describe it/them in detail. If a party does not possess such document(s) and is not aware of such document(s), then that party need only admit such. The Opposers should be required to respond to the request for admissions immediately.

Respectfully submitted,


/s/ Harry F. Cole
Harry F. Cole

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July 30, 1998

CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of July, 1998, I caused copies of the accompanying "Motion for Leave to Submit Reply" to be placed in the U.S. Postal Service, first class postage prepaid, or hand delivered (as indicated below), addressed to the following:

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